

ESTTA Tracking number: **ESTTA458797**

Filing date: **02/27/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91194679
Party	Plaintiff John P. Avlon
Correspondence Address	CAROL A GENIS K&L GATES LLP PO BOX 1135 CHICAGO, IL 60690 1135 UNITED STATES chicago.trademarks@klgates.com, carol.genis@klgates.com, cristiana.huynh@klgates.com
Submission	Motion for Summary Judgment
Filer's Name	Jeffrey Petersen
Filer's e-mail	jeffrey.petersen@klgates.com, carol.genis@klgates.com
Signature	/jtp/
Date	02/27/2012
Attachments	Ind Nation MSJ.pdf (44 pages)(1613675 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of application Serial No. 77/514,179
Published in the *Official Gazette* on December 29, 2009

JOHN PHILLIPS AVLON,
an individual

Opposer,

v.

DEMARCUS FREEMON,
an individual

Applicant.

Opposition No. 91194679

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

OPPOSER'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, Opposer John Phillips Avlon ("Opposer"), by his attorneys, hereby moves the Board to grant summary judgment and sustain Opposer's opposition against Applicant Demarcus Freemon's ("Applicant") trademark application no. 77/514,179 on the grounds that Applicant's mark is confusingly similar to Opposer's INDEPENDENT NATION mark.

INTRODUCTION / PRELIMINARY STATEMENT

In the opposed application, Applicant seeks registration of the phrase "Independent Nation" for "[p]ublication of electronic magazines, blogs, articles and interactive literary forums." Opposer has opposed this registration under § 2(d) of the Lanham Act based on Opposer's prior use of the mark INDEPENDENT NATION in connection with the publication of a book titled "*INDEPENDENT NATION*" in 2004 and the website independentnation.org, which has provided information, articles, blogs, news portals and on online forum in the fields of

news, politics, media, social issues and entertainment since 2004. See Declaration of John Phillips Avlon ("Avlon Decl."), ¶¶ 2-4.

Opposer served discovery on Applicant on November 23, 2011, including a set of comprehensive Requests for Admissions covering topics such as Opposer's first use of the mark and the identical nature of the marks. Applicant did not respond to the Requests for Admissions timely, however, failing to serve responses until January 11, 2012. Under the Federal Rules of Civil Procedure, Applicant is deemed to have admitted the requests, including admissions that the marks are identical, the parties' services are highly related and the channels of trade are similar. These admissions and the factual record dictate that summary judgment in favor of Opposer is appropriate here, and that the opposition to the application should be sustained.

FACTUAL BACKGROUND

Opposer is an author, television commentator and columnist who has frequently appeared on television, and whose work is provided across a multimedia platform. Opposer's book entitled "*INDEPENDENT NATION*" with the tagline "How Centrists Can Change American Politics," was published in February 2004. Avlon Decl., ¶ 2.

Since as early as 2004, Opposer has used the mark INDEPENDENT NATION in connection with the advertising and promotion of his book published that year, as well as in connection with certain services, namely, providing a Web site that features information and articles in the field of news, politics, media, social issues, public affairs and entertainment, providing a blog featuring information in the field of news, politics, media, social issues, public affairs and entertainment, providing an Internet news portal featuring links to news stories and articles in the field of current events, providing an online forum in the field of politics, social issues, media, news, public affairs and entertainment and providing an on-line community for registered users to participate in discussions, get feedback from their peers, form virtual communities, and engage in social networking. Avlon Decl., ¶¶ 3-4.

Opposer owns the domain names www.independentionation.org and www.independentionation.com, on which Opposer has hosted and/or continues to host his INDEPENDENT NATION branded website since 2004, having registered those domain names at or before that time. Avlon Decl., ¶ 3; *see also* Declaration of Jeffrey T. Petersen (“Petersen Decl.”), ¶ 9.

On December 11, 2009, Opposer filed use-based application no. 77/891,121 to register the mark INDEPENDENT NATION for “providing a website featuring information and articles in the field of news, politics, media, social issues, public affairs and entertainment; providing a blog featuring information in the field of news, politics, media, social issues, public affairs and entertainment; providing an Internet news portal featuring links to news stories and articles in the field of current events” in International Class 41 and “online forum in the field of politics, social issues, media, news, public affairs and entertainment; computer services, namely, creating an on-line community for registered users to participate in discussions, get feedback from their peers, form virtual communities, and engage in social networking” in International Class 42. Declaration of Jeffrey T. Petersen (“Petersen Decl.”), Ex. A.

Applicant filed his intent-to-use application for the mark INDEPENDENT NATION on July 3, 2008 for the publication of electronic magazines, articles and blogs. Petersen Decl., Ex. B. The application was published for opposition on December 29, 2009.

On November 23, 2011, Opposer served discovery on Applicant, including Requests for Admissions which requested that Applicant admit that:

1. Applicant did not use the mark prior to July 3, 2008;
2. Opposer was the first to use the mark in connection with the electronic publication of articles and blog submissions;
3. The marks are identical;
4. The parties’ services and publications are offered in the same channels of trade; and
5. There have been numerous instances of confusion between the parties.

Petersen Decl., ¶ C.¹

Applicant failed to respond to the requests in a timely fashion, serving responses on January 11, 2012. Petersen Decl., ¶ 7, Ex. D.

ARGUMENT

I. There is No Genuine Issue of Fact that Opposer was the Prior User of the Mark

Opposer has used the mark continuously since 2004 for the sale of his book and the promotion and employment of his INDEPENDENT NATION branded website. Avlon Decl., ¶¶ 2-4. Applicant, on the other hand, never used the mark prior to at least July 3, 2008, having filed an intent-to-use application on that date. Thus, for at least four years, Opposer was consistently using the mark in interstate commerce before Applicant ever did.

Furthermore, by failing to respond to the requests for admissions, including the request that Applicant admit Opposer was the first to use the mark (Petersen Decl., ¶ 6), the issue of priority has been deemed admitted against Applicant. *See* Fed. R. Civ. P. 36(b) (“A matter admitted under this rule is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended.”) Thus, there can be no genuine issue of material fact on Opposer’s prior use.

II. There is No Genuine Issue of Fact as to the Likelihood of Confusion between the Marks

The pertinent factors in determining the likelihood of confusion set forth in *E.I. DuPont DeNemours & Co.*, 476 F.2d 1357, 1361 (C.C.P.A. 1973) to which the Board often refers include:

¹ Although the parties submitted a Joint Status Report setting forth their willingness to extend discovery to the end of March 2012, the Board in a December 14, 2011 Order set forth that the discovery period had not been extended past the date it had been set to close, December 29, 2011, nor did Applicant’s counsel ever request an extension of time to respond to the discovery that had been served by Opposer. Petersen Decl., ¶ 6.

1. The similarity of the marks in their entirety, including their appearance, sound, connotation and commercial impression;
2. The similarity of the goods or services;
3. The similarity of the channels of trade; and
4. The extent of potential confusion.

A. The Marks are Identical

There is no genuine issue of material fact as to the similarity of the marks, as the INDEPENDENT NATION marks are identical. *See, e.g. Oleg Cassini, Inc. v. Cassini Tailors, Inc.*, 764 F. Supp. 1104, 1101 (W.D. Tex. 1990) (granting partial summary judgment to plaintiff on the likelihood of confusion due to the substantial identity between the marks).

Applicant has also admitted that the marks are identical by failing to serve a timely response to the Requests for Admissions, further establishing there is no genuine issue of material fact.

B. The Services Provided Pursuant to the Marks are Substantially Identical

Both parties attempt via their applications to provide electronic articles, blogs and interactive forums under the INDEPENDENT NATION mark, such that the services provided are substantially identical. Petersen Decl., Exs. A and B; *see, e.g. Oleg Cassini, Inc.*, 764 F. Supp. at 1111 (granting partial summary judgment to plaintiff on the likelihood of confusion between the marks and stating “neither direct competition between the parties nor identity of products or services is necessary for infringement to occur...Rather, the question is whether the products or services of the defendant are sufficiently related to those of the plaintiff to cause consumer confusion of both entities sell their products or services under a similar name.”)

Although it appears Applicant has not established his website at this time, the similarity of proposed services, *i.e.*, electronic literature and interactive discussion forums, is evident here.

Furthermore, Applicant must be deemed to have admitted the services and/or publications are similar by not responding to the Requests for Admissions.

C. The Channels of Trade are Identical

The channels of trade for both marks are websites providing electronic articles and blogs, and thus the channels are identical. Once again, Applicant's failure to respond to the Requests for Admissions also confirm that the channels of trade are identical, and that there is no genuine issue of material fact here.

D. The Extent of Potential Confusion is Great

The identical nature of the marks, services and/or publications provided and channels of trade dictate that the extent of potential confusion between such marks is great. *See, e.g. Homax Prods. v. Homax, Inc.*, 2009 U.S. Dist. LEXIS 126699, * 35 (S.D. Tex. August 5, 2009) (given the similarity of the marks, the products and the channels of trade, Court concluded on summary judgment defendant's use of the mark was likely to lead to consumer confusion).

III. Summary Judgment is Appropriate

Given that Opposer is the prior user of the INDEPENDENT NATION mark, and given the identity of the marks, the identify of the services and/or publications provided under those marks, the identical channels of trade, and the resulting extent of potential confusion, Opposer is entitled to a grant of summary judgment such that Applicant's application no. 77/514179 is dismissed with prejudice.

CONCLUSION

For all the foregoing reasons, Opposer John Phillips Avlon respectfully requests that the Board grant his Motion for Summary Judgment.

DATED this 27th day of February, 2012.

Respectfully submitted,

JOHN PHILLIPS AVLON

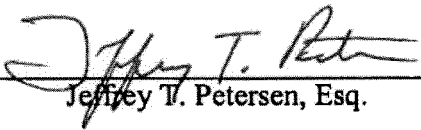
By: Jeffrey T. Petersen
One of His Attorneys

Carol A. Genis, Esq.
Jeffrey T. Petersen, Esq.
Cristiana N. Huynh, Esq.
K&L GATES LLP
P.O. Box 1135
Chicago, Illinois 60690-1135
Telephone: (312) 807-4272
Fax: (312) 827-8084

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a copy of the foregoing Opposer's Motion for Summary Judgment is being sent by over night mail this 27th day of February 2012 in an envelope addressed to Applicant's counsel at:

Herbert T. Patty, Esq.
1625 The Alameda, Suite 508
San Jose, CA 95126



Jeffrey T. Petersen, Esq.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of application Serial No. 77/514,179
Published in the *Official Gazette* on December 29, 2009

JOHN PHILLIPS AVLON,
an individual

Opposer,

v.

DEMARCUS FREEMON,
an individual

Applicant.

Opposition No. 91194679

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

**DECLARATION OF OPPOSER JOHN PHILLIPS AVLON
IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

I, JOHN PHILLIPS AVLON, hereby declare:

1. I am the Opposer in the above-captioned proceeding. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would competently testify thereto.

2. I am an author, frequent television commentator and columnist, whose work has been provided across a multimedia platform with the use of the mark "INDEPENDENT NATION" since at least 2004. My book entitled "*INDEPENDENT NATION*" with the tagline "How Centrists Can Change American Politics," was published in February 2004. Attached as Exhibit A to my Declaration is a true and correct copy of the jacket cover for my book. Since as early as 2004, I have used the mark INDEPENDENT NATION in connection with the advertising and promotion of my book. The book is still available for sale nationwide today, and has been since 2004.

3. Since as early as 2004, I have owned the domain names www.independentnation.org and www.independentnation.com, on which I have hosted my INDEPENDENT NATION-branded website. These domain names have been registered and used continuously in connection with the INDEPENDENT NATION mark and website since at least as early as 2004.

4. The INDEPENDENT NATION website features information and articles in the field of news, politics, media, social issues, public affairs and entertainment, provides a blog featuring information in the field of news, politics, media, social issues, public affairs and entertainment, provides an Internet news portal featuring links to news stories and articles in the field of current events, provides an online forum in the field of politics, social issues, media, news, public affairs and entertainment and provides an on-line community for registered users to participate in discussions, get feedback from peers, form virtual communities, and engage in social networking. Attached as Exhibit B to my Declaration are true and correct copies of the current printout of the website, as well as several printouts of archived versions of the website attained from <http://www.archive.org/web/web.php>.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 27th day of February, 2012 at my direction in Chicago, Illinois.


John Phillips Avlon

EXHIBIT A

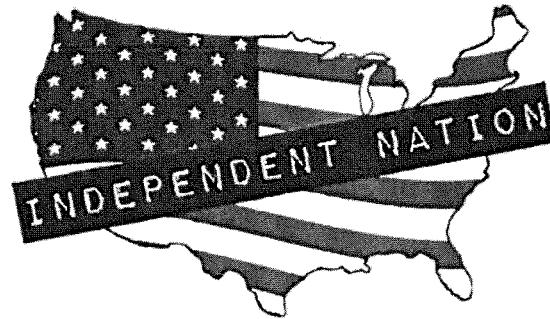
Independent



HOW THE VITAL CENTER IS CHANGING AMERICAN POLITICS

JOHN P. AVELON

EXHIBIT B



Posts

IAEA Report on Iran's Nuclear Program Shows Disturbing Advancements

New IAEA findings: Iran is accelerating its nuclear program despite tough international sanctions.

On Friday, BPC's National Security Project (NSP) released an analysis of the International Atomic Energy Agency's latest report on Iran's nuclear

What We're Reading: February 24

Throughout the week, BPC's Housing Commission will highlight news items that address critical developments in housing policy. Any views expressed in the content posted on this forum do not necessarily represent the views of the Commission, its c

TheModerate Voice

Posts

Energy Independence for the U.S. May be Right Around the Corner

Notwithstanding the political contention over the Keystone pipeline, and over whether or not the nation should be doing more drilling for oil and gas, it may be that energy independence for America is right around the corner. The current spike

New NPR Ethics Handbook Gets It Right

by Rosen on NPR's new ethics handbook:

In my view the most important changes are these passages:

In all our stories, especially matters of controversy, we strive to consider the strongest arguments we can find on all sides, seeking to deliver

Posts

Could Pro-Choice Nevada Governor Brian Sandoval Be the GOP's Great Hope? - The Daily Beast

Quick: Name a young Hispanic Republican swing-state governor with a record of reducing the size of government and cutting spending while passing education reforms like ending teacher tenure and establishing merit pay, all with a Democratic legis

Their Many Debate Missteps Could Haunt Romney and Santorum - The Daily Beast

The 20th—and possibly final—Republican primary debate was messy at times, but it will leave a mark, not so much for the candidates' successes but because of the missteps that were made and that might soon show up in an attack ad. Rick Santorum c

Lawmakers Pledge to Reform, But Gerrymandering Keeps Getting Worse - The Daily Beast

The rigged system of redistricting is quietly reaching new lows of collusion and cronyism in states across the country. It's an update to an old story—the effort of legislatures to draw themselves partisan safe seats, known as gerrymandering. Si

The GOP's Chaotic Primary Calendar Makes Early Nomination Clinch Tough - The Daily Beast

With Texas court-ordered to move its primary back to at least May 26, the delegate math it takes to win the GOP nomination just got a lot tougher. Now, the likelihood that any candidate will clinch the nomination before late May or even June see

Independent Voters Are Rejecting Romney - CNN.com

Mitt Romney is learning that there are costs to an ugly, extended primary fight marked by a rush to the far right. Independent voters get alienated by the extremism. Last weekend, Romney was trying to reassure attendees at the Conservative Polit...

Maine, Iowa Caucus Mishaps Prove It's Time for a Better System - The Daily Beast

After the epic fail of Iowa's caucuses—fairly naming Mitt Romney the winner for more than a



Posts

Daily Dose: Leader-Sleep

Tags: daily-doseNo Budget - No Paychex
berhgeorge.vinnovitch

Tips, questions or ideas? Email Collin Berglund at dailydose@nolabels.org or tweet at me (@nolabelsorg).

Subscribe to the Daily Dose now

Daily Dose: Polarization

Tags: daily-doseDave Walkerpolarization

POLARIZATION: Congress is polarized. Really polarized. Here's why: John Aloysius Farrell for National Journal: Divided We Stand

Rise of the Center

Posts

No Talking Points: All Presidents Apologize - Should Obama Have for Accidental Burning of Korans?

I'm a big fan of these 'No Talking Points' segments that I've been enjoying across from Don Lemon that try to cut through the hyperbole and talk more directly to substance. In this case, the GOP nominees are going after Obama for apologizing for...

Is the First Amendment a Good Defense for Unlimited Super PAC Spending?

An article in Forbes, highlighted today by Politico, reveals the lengths that some affluent donors are willing to go to support candidates aligned with their interests. It reported that Sheldon Adelson, the billionaire gambling and hotel magnate,

No Easy or Uncomplicated Answers in How

INTERNET ARCHIVE
Wayback Machine
http://www.independentnation.org/ Go
108 captures
13 Mar '04 - 22 Jun '11
MAR JAN FEB Close
2
2009 2010 2011 Help

HOME THE BOOK THE AUTHOR FORUM PRESS ROOM CONTACT EXCERPTS CENTRISM IN THE NEWS CENTRIST QUOTES

Independent

HOW CENTRISTS CAN CHANGE AMERICAN POLITICS

View John Avlon
on The Daily Show
with Jon Stewart
(windows media player required)

I was no party man myself, and the first wish of my heart was, if parties did exist, to reconcile them.
—George Washington



Author, John P. Avlon

"To Avlon, centrism is not a matter of compromise or reading polls; rather it's an antidote to the politics of divisiveness, providing principled opposition to political extremes.... Avlon's centrist tent is a large one: the political campaigns of presidents as diverse as Theodore Roosevelt, Wilson, JFK, Nixon and Clinton are chronicled to demonstrate the staying power and effectiveness of centrist politics." —Publishers Weekly

HOME | THE BOOK | THE AUTHOR | CENTRISM
FORUM | PRESS ROOM | CONTACT | EXCERPTS | CENTRIST QUOTES

Independent Nation
How Centrists Can Change American Politics

by John P. Avlon

Copyright © 2004-2007 John P. Avlon

Designed and developed by [FSB Associates](#)

INTERNET ARCHIVE Wayback Machine	http://independentnation.org/	Go	FEB	MAR	JAN	Close
	106 captures		◀	5	▶	
	13 Mar 04 - 22 Jul 11		2008	2009	2011	Help

[HOME](#) [THE BOOK](#) [THE AUTHOR](#) [FORUM](#) [PRESS ROOM](#) [CONTACT](#) [EXCERPTS](#) [CENTRISM IN THE NEWS](#) [CENTRIST QUOTES](#)

Independent

HOW CENTRISTS CAN CHANGE AMERICAN POLITICS

View John Avlon
on The Daily Show
with Jon Stewart
(windows media player required)

I was no party man myself, and the first wish of my
heart was, if parties did exist, to reconcile them.
—George Washington



Author, John P. Avlon

*"rewarding portrait of a political trend the established parties have tried
to ignore." —Barron's*

[HOME](#) | [THE BOOK](#) | [THE AUTHOR](#) | [CENTRISM](#)
[FORUM](#) | [PRESS ROOM](#) | [CONTACT](#) | [EXCERPTS](#) | [CENTRIST QUOTES](#)

Independent Nation
How Centrists Can Change American Politics
by John P. Avlon
Copyright © 2004-2007 John P. Avlon

Designed and developed by [FSB Associates](#)

INTERNET ARCHIVE <http://www.independentnation.org/> Go

waybackmachine 106 captures 13 Mar 04 - 22 Jul 11

OCT DEC FEB Close

◀ 16 ▶

2007 2008 2010 Help

[HOME](#) [THE BOOK](#) [THE AUTHOR](#) [FORUM](#) [PRESS ROOM](#) [CONTACT](#) [EXCERPTS](#) [CENTRISM IN THE NEWS](#) [CENTRIST QUOTES](#)

Independent

HOW CENTRISTS CAN CHANGE AMERICAN POLITICS

View John Avlon
on The Daily Show
with Jon Stewart
(windows media player required)

I was no party man myself, and the first wish of my heart was, if parties did exist, to reconcile them.
—George Washington



Author, John P. Avlon

"Effective leadership requires independence and courage to look beyond partisan politics for the best solution. John P. Avlon's Independent Nation details the history of principled political leaders who fearlessly took on special interests from both the left and right in defense of national interest. It offers much-needed historic perspective on our pursuit of a more civil society." —Rudolph W. Giuliani

[HOME](#) | [THE BOOK](#) | [THE AUTHOR](#) | [CENTRISM](#)
[FORUM](#) | [PRESS ROOM](#) | [CONTACT](#) | [EXCERPTS](#) | [CENTRIST QUOTES](#)

Independent Nation
How Centrists Can Change American Politics
by John P. Avlon
Copyright © 2004-2007 John P. Avlon

Designed and developed by [FSB Associates](#)

INTERNET ARCHIVE
Wayback Machine
<http://www.independentnation.org/> Go
106 captures
13 Mar 04 - 22 Jul 11
APR JUL SEP Close
◀ 8 ▶
2006 2007 2008 Help

[HOME](#) [THE BOOK](#) [THE AUTHOR](#) [FORUM](#) [PRESS ROOM](#) [CONTACT](#) [EXCERPTS](#) [CENTRISM IN THE NEWS](#) [CENTRIST QUOTES](#)

Independent Nation

HOW CENTRISTS CAN CHANGE AMERICAN POLITICS

View John Avlon
on The Daily Show
with Jon Stewart

Every difference of opinion is not a difference of
principle. We are all Republicans; we are all
Federalists.
—Thomas Jefferson



Author, John P. Avlon

*"compelling distillation of recent political history through the prism of
centrist politics. It's well written and fun to read... and its timing
couldn't be better." —New York Post*

[HOME](#) | [THE BOOK](#) | [THE AUTHOR](#) | [CENTRISM](#)
[FORUM](#) | [PRESS ROOM](#) | [CONTACT](#) | [EXCERPTS](#) | [CENTRIST QUOTES](#)

Independent Nation
How Centrists Can Change American Politics

by John P. Avlon

Copyright © 2004-2007 John P. Avlon

Designed and developed by [FSB Associates](#)

INTERNET ARCHIVE
Wayback Machine
106 captures
13 Mar '04 - 22 Jul '11

<http://independentnation.org/> Go

APR JUN AUG Close
◀ 15 ▶
2005 2006 2007 Help

[HOME](#) [THE BOOK](#) [THE AUTHOR](#) [FORUM](#) [PRESS ROOM](#) [CONTACT](#) [EXCERPTS](#) [CENTRISM IN THE NEWS](#) [CENTRIST QUOTES](#)

Independent

HOW CENTRISTS CAN CHANGE AMERICAN POLITICS

View John Avlon
on The Daily Show
with Jon Stewart

Every difference of opinion is not a difference of principle. We are all Republicans; we are all Federalists.
—Thomas Jefferson



Author, John P. Avlon

"To Avlon, centrism is not a matter of compromise or reading polls; rather it's an antidote to the politics of divisiveness, providing principled opposition to political extremes.... Avlon's centrist tent is a large one: the political campaigns of presidents as diverse as Theodore Roosevelt, Wilson, JFK, Nixon and Clinton are chronicled to demonstrate the staying power and effectiveness of centrist politics." —Publishers Weekly

[HOME](#) | [THE BOOK](#) | [THE AUTHOR](#) | [CENTRISM](#)
[FORUM](#) | [PRESS ROOM](#) | [CONTACT](#) | [EXCERPTS](#) | [CENTRIST QUOTES](#)

Independent Nation
How Centrists Can Change American Politics
by John P. Avlon
Copyright © 2004 John P. Avlon

Designed and developed by [FSB Associates](#)

INTERNET ARCHIVE	http://www.independentnation.org/	Go	DEC	FEB	JUL	Close
Wayback Machine	106 captures		◀	8	▶	
	13 Mar 04 - 22 Jul 11		2004	2005	2006	Help

[HOME](#) [THE BOOK](#) [THE AUTHOR](#) [FORUM](#) [PRESS ROOM](#) [CONTACT](#) [EXCERPTS](#) [CENTRISM IN THE NEWS](#) [CENTRIST QUOTES](#)

Independent

HOW THE VITAL CENTER IS CHANGING AMERICAN POLITICS

Neither party should be defined by pandering to the outer reaches of American politics and the agents of intolerance, whether they be Louis Farrakhan or Al Sharpton on the left, or Pat Robertson and Jerry Falwell on the right.
—Senator John McCain



Author, John P. Avlon

"... a brave and compelling case for the past persistence and future dominance of American Centrism." —Ed Kilgore, Policy Director of the Democratic Leadership Council

[HOME](#) | [THE BOOK](#) | [THE AUTHOR](#) | [CENTRISM](#)
[FORUM](#) | [PRESS ROOM](#) | [CONTACT](#) | [EXCERPTS](#) | [CENTRIST QUOTES](#)

Independent Nation
How the Vital Center is Changing American Politics
by John P. Avlon
Copyright © 2004 John P. Avlon

Designed and developed by [FSB Associates](#)

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a copy of the foregoing Declaration of Opposer John Phillips Avlon in Support of Motion for Summary Judgment is being sent to counsel for Applicant via Federal Express overnight delivery on February 27, 2012 addressed to Applicant's counsel at:

Herbert T. Patty, Esq.
1625 The Alameda, Suite 508
San Jose, CA 95126



Jeffrey T. Petersen, Esq.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of application Serial No. 77/514,179
Published in the *Official Gazette* on December 29, 2009

JOHN PHILLIPS AVLON,
an individual

Opposer,

v.

DEMARCUS FREEMON,
an individual

Applicant.

Opposition No. 91194679

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

DECLARATION OF JEFFREY T. PETERSEN
IN SUPPORT OF OPPOSER'S MOTION FOR SUMMARY JUDGMENT

I, JEFFREY T. PETERSEN, hereby declare:

1. I am counsel for the Opposer in the above-captioned proceeding. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would competently testify thereto.
2. Attached to this Declaration as Exhibit A is a true and correct copy of Opposer's trademark application no. 77/891,121 filed December 11, 2009.
3. Attached to this Declaration as Exhibit B is a true and correct copy of Applicant's trademark application no. 77/514,179 filed July 3, 2008 as an intent-to-use application.
4. Pursuant to the current schedule issued by the Board for this opposition proceeding, discovery closed on December 29, 2011.
5. Pursuant to the November 22, 2011 Order of the Board, I conferred with counsel for the Applicant on the submission of a Joint Status Report, which the parties submitted to the

Board on December 12, 2011. Docket No. 20. Paragraph of the Joint Status Report provided that the parties were in agreement that written discovery and oral depositions could be concluded by the end of March 2012.

6. The Board then issued a December 14, 2011 order expressly stating that, despite the indication of the parties of a willingness to extend discovery through March 2012, the current schedule, including the schedule for discovery, would remain as previously set. The Board noted that the parties "have not made a motion to extend and the Board generally does not consider 'embedded' motions." Docket No. 21.

7. Counsel for Opposer had previously served a set of discovery, including Requests for Admissions, on counsel for Applicant on November 23, 2011. Attached as Exhibit C is a true and correct copy of the Requests. Applicant, however, did not respond to the Requests for Admissions timely. Responses were not served until January 11, 2012. Attached as Exhibit D is a true and correct copy of the Responses.

8. Counsel for Applicant also purported to serve his own set of discovery on Opposer by email on February 13, 2012. It is Opposer's position that, given the Orders of the Board, this discovery is untimely and Opposer has no obligation to respond to it.

9. Our law firm assisted Opposer in the registration of his domain names, www.independntnation.org and www.independntnation.com. Attached as Exhibit E is a true and correct copy of the domain registration records for those domain names showing that www.independntnation.com and www.independntnation.org were registered by no later than 2004.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 27th day of February at Chicago, Illinois.


Jeffrey T. Petersen

EXHIBIT A



United States Patent and Trademark Office

[Home](#) | [Site Index](#) | [Search](#) | [FAQ](#) | [Glossary](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)**Trademarks > Trademark Electronic Search System (TESS)***TESS was last updated on Mon Feb 27 04:35:45 EST 2012*[TESS HOME](#) [NEW USER](#) [STRUCTURED](#) [FREE FORM](#) [BROWSE DICT](#) [SEARCH OG](#) [BOTTOM](#) [HELP](#)[Logout](#) | Please logout when you are done to release system resources allocated for you.**Record 1 out of 1**[TARR Status](#) [ASSIGN Status](#) [TDR](#) [TTAB Status](#) (Use the "Back" button of the Internet Browser to return to TESS)**INDEPENDENT NATION****Word Mark** INDEPENDENT NATION**Goods and Services** IC 035. US 100 101 102. G & S: Providing a website featuring information in the field of political issues, political elections, public relations and promoting public awareness in the field of social welfare. FIRST USE: 20040200. FIRST USE IN COMMERCE: 20040200

IC 038. US 100 101 104. G & S: Providing an online forum for transmission of messages among computer users in the fields of politics, social issues, media, news, public affairs and entertainment. FIRST USE: 20040200. FIRST USE IN COMMERCE: 20040200

IC 041. US 100 101 107. G & S: Providing a website featuring information and articles in the field of current event news and entertainment; providing an on-line journal, namely, a blog featuring information in the field of news, politics, media, social issues, public affairs and entertainment; providing an internet news portal featuring links to news stories and articles in the field of current events. FIRST USE: 20040200. FIRST USE IN COMMERCE: 20040200

IC 042. US 100 101. G & S: Computer services, namely, creating an on-line community for registered users to participate in discussions, get feedback from their peers, form virtual communities, and engage in social networking. FIRST USE: 20040200. FIRST USE IN COMMERCE: 20040200

Standard Characters Claimed**Mark Drawing Code** (4) STANDARD CHARACTER MARK**Serial Number** 77891121**Filing Date** December 11, 2009**Current Filing Basis** 1A

**Original Filing
Basis** 1A

Owner (APPLICANT) Avlon, John P. INDIVIDUAL UNITED STATES 5th Floor 29 Broadway New York NEW YORK 10006

**Attorney of
Record** Carol A. Genis

Type of Mark SERVICE MARK

Register PRINCIPAL

**Live/Dead
Indicator** LIVE

[TESS HOME](#)

[NEW USER](#)

[STRUCTURED](#)

[FREE FORM](#)

[BROWSE Dict](#)

[SEARCH OG](#)

[TOP](#)

[HELP](#)

[|.HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)

EXHIBIT B



United States Patent and Trademark Office

[Home](#) | [Site Index](#) | [Search](#) | [FAQ](#) | [Glossary](#) | [Guides](#) | [Contacts](#) | [eBusiness](#) | [eBiz alerts](#) | [News](#) | [Help](#)

Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Mon Feb 27 04:35:45 EST 2012

[TESS HOME](#)
[NEW USER](#)
[STRUCTURED](#)
[FREE FORM](#)
[Browse Dict](#)
[SEARCH OG](#)
[BOTTOM](#)
[HELP](#)

[Logout](#) | Please logout when you are done to release system resources allocated for you.

Record 1 out of 1

[TARR Status](#)
[ASSIGN Status](#)
[TDR](#)
[TTAB Status](#)
 (Use the "Back" button of the Internet Browser to return to TESS)



Independent Nation

Word Mark	INDEPENDENT NATION
Goods and Services	IC 041. US 100 101 107. G & S: Publication of electronic magazines, blogs, articles, and interactive literary forums
Mark Drawing Code	(3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS
Design Search Code	03.17.02 - Feathers
Serial Number	77514179
Filing Date	July 3, 2008
Current Filing Basis	1B
Original Filing Basis	1A
Published for Opposition	December 29, 2009
Owner	(APPLICANT) Freemon, DeMarcus J INDIVIDUAL UNITED STATES 1323 Carlton Ave. Menlo Park CALIFORNIA 94025
Attorney of Record	Herbert T. Patty
Description of Mark	Color is not claimed as a feature of the mark. The mark consists of three feathers which are shaded at the tips and coupled together at their base. Below the three feathers is the wording "INDEPENDENT NATION".
Type of Mark	SERVICE MARK
Register	PRINCIPAL
Live/Dead Indicator	LIVE

TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICTIONARY	SEARCH OPTIONS	TOP	HELP
---------------------------	--------------------------	----------------------------	---------------------------	-----------------------------------	--------------------------------	---------------------	----------------------

[HOME](#) | [SITE INDEX](#) | [SEARCH](#) | [eBUSINESS](#) | [HELP](#) | [PRIVACY POLICY](#)

EXHIBIT C

K&L|GATES

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of application Serial No. 77/514,179
Published in the *Official Gazette* on December 29, 2009

JOHN PHILLIPS AVLON,
an individual

Opposer,

v.

DEMARCUS FREEMON,
an individual

Applicant.

Opposition No. 91194679

United States Patent and Trademark Office
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS

John Phillips Avlon ("Opposer") hereby requests, pursuant to Rule 36 of the Federal Rules of Civil Procedure, that Applicant, Demarcus Freemon ("Applicant"), admit the following facts set forth below.

Instructions and Definitions

1. Opposer hereby incorporates the Instructions and Definitions from its First Set of Interrogatories.

Requests for Admission

1. Admit that Applicant is engaged in the business of providing electronic magazines and articles.

ANSWER:

ANSWER:

2. Admit that the services identified in Applicant's Application Serial No. 77/514,179 are highly related to the services identified in Opposer's Application Serial No. 77/891,121.

ANSWER:

3. Admit that Applicant's Application Serial No. 77/514,179 was initially filed as an intent-to-use application.

ANSWER:

4. Admit that Applicant's Application Serial No. 77/514,179 was filed on July 3, 2008

ANSWER:

5. Admit that Applicant did not use Applicant's Mark prior to July 3, 2008

ANSWER:

6. Admit that Opposer was the first to use the trademark "INDEPENDENT NATION" in connection with the publication, including the electronic publication, of articles and blog submissions.

ANSWER:

7. Admit that Applicant's Mark is identical in sight and sound to Opposer's Mark.

ANSWER:

8. Admit that Applicant and Opposer advertise, market, offer to sell and sell their respective services and/or publications in the same channels of trade.

ANSWER:

K&L|GATES

9. Admit that Applicant was aware of Opposer's Mark when it filed Application Serial No. 77/514,179.

ANSWER:

10. Admit that Applicant is aware of numerous instances of confusion between Applicant and Opposer.

ANSWER:

11. Admit that persons have contacted Applicant believing that Applicant was the Opposer.

DATED this 23rd day of November, 2011.

Respectfully submitted,

JOHN PHILLIPS AVLON

By: Jeffrey T. Petersen
One of His Attorneys

Carol A. Genis, Esq.
Jeffrey T. Petersen, Esq.
Cristiana N. Huynh, Esq.
K&L GATES LLP
P.O. Box 1135
Chicago, Illinois 60690-1135
Telephone: (312) 807-4272
Fax: (312) 827-8084

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a copy of the foregoing Opposer's First Set of Requests for Admissions is being deposited with the United States Postal Service with sufficient postage as first-class mail this 23rd day of November 2011 in an envelope addressed to Applicant's counsel at:

Herbert T. Patty, Esq.
938 Alta Mar Terrace
San Jose, California 95126



Jeffrey T. Petersen, Esq.

EXHIBIT D

1 **IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
2 **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

3 In the matter of application Serial No. 77/514,179
4 Published in the *Official Gazette* on December 29, 2009

5 JOHN PHILLIPS AVLON,
6 an individual

7 Opposer,

8 v.

9 DEMARCUS FREEMON,
10 an individual

11 Applicant.

12 United States Patent and Trademark Office
13 Trademark Trial and Appeal Board
14 P.O. Box 1451
15 Alexandria, VA 22313-1450

16 **APPLICANT'S RESPONSE TO FIRST SET OF ADMISSIONS**

17 **ADMISSION NO. 1**

18 Admit that Applicant is engaged in the business of providing electronic magazines and
19 articles.

20 **RESPONSE TO ADMISSION NO. 1**

21 Applicant does not concede that Applicant is engaged in the business of providing
22 electronic magazines and articles.

23 **ADMISSION NO. 2**

24 Admit that the services identified in Applicant's Application Serial No. 77/514,179 are
25 highly related to the services identified in Opposer's Application Serial No. 77/891, 121.

26 **RESPONSE TO ADMISSION NO. 2**

27 Applicant does not concede that the services identified in Applicant's Application Serial
28 No. 77/514,179 are highly related to the services identified in Opposer's Application Serial No.
29 77/891, 121.

1 **ADMISSION NO. 3**

2 Admit that Applicant's Application Serial No. 77/514, 179 was initially filed as an intent-
3 to-use application.

4 **RESPONSE TO ADMISSION NO. 3**

5 Applicant does not concede that Application Serial No. 77/514,179 was initially filed as
6 an intent-to-use application.

7 **ADMISSION NO. 4**

8 Admit that Applicant's Application Serial No. 77/514,179 was filed on July 3, 2008.

9
10 **RESPONSE TO ADMISSION NO. 4**

11 It is Applicant's present understanding that the Application Serial No. 77/514,179 was
12 filed on July 3, 2008.

13 **ADMISSION NO. 5**

14 Admit that Applicant did not use Applicant's Mark prior to July 3, 2008.

15
16 **RESPONSE TO INTTEROGATORY NO. 5**

17 It is Applicant's present understanding that Applicant did not use Applicant's Mark prior
18 to July 3, 2008.

19 **ADMISSION NO. 6**

20 Admit that Opposer was the first to use the trademark "INDEPENDENT NATION" in
21 connection with the publication, including the electronic publication, of articles and blog
22 submissions.

23 **RESPONSE TO ADMISSION NO. 6**

24 Applicant does not concede that Opposer was the first to use the trademark
25 "INDEPENDENT NATION" in connection with the publication, including the electronic
26 publication, of articles and blog submissions.

27 **ADMISSION NO. 7**

28 Admit that Applicant's Mark is identical in sight and sound to Opposer's Mark.

1 **RESPONSE TO ADMISSION NO. 7**

2 Applicant does not concede that Applicant's Mark is identical in sight and sound to
3 Opposer's Mark.

4 **ADMISSION NO. 8**

5 Admit that Applicant and Opposer advertise, market, offer to sell and sell their respective
6 services and/or publications in the same channels of trade.

7 **RESPONSE TO ADMISSION NO. 8**

8 Applicant does not concede that Applicant and Opposer advertise, market, offer to sell
9 and sell.

10 **ADMISSION NO. 9**

11 Admit that Applicant was aware of Opposer's Mark when it filed Application Serial No.
12 77/514,179.

13 **RESPONSE TO ADMISSION NO. 9**

14 Applicant does not concede that Applicant was aware of Opposer's Mark when Applicant
15 filed Application Serial No. 77/514,179.

16 **ADMISSION NO. 10**

17 Admit that Applicant is aware of numerous instances of confusion between Applicant and
18 Opposer.

19 **RESPONSE TO ADMISSION NO. 10**

20 Applicant does not concede that Applicant was aware of numerous instances of confusion
21 between Applicant and Opposer.

22 **ADMISSION NO. 11**

23 Admit that persons have contacted Applicant believing that Applicant was the Opposer.

24 **RESPONSE TO ADMISSION NO. 11**

25 Applicant does not concede that persons have contacted Applicant believing that
26 Applicant was the Opposer.

1 DATED this 11th day of January, 2012.

2 Respectfully submitted,

3 DEMARCUS FREEMON

4 By: 
5 His Attorney

6 Herbert T. Patty, Esq.
7 1625 The Alameda, Suite 508
8 San Jose, CA 95126
9 Email: htpattylaw@gmail.com
10 Telephone: (408) 520-8701
11 Facsimile: (408) 549-9931
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a copy of the foregoing Opposer's First Set of Requests for Admissions is being deposited with the United States Postal Service with sufficient postage as first-class mail that 11th day of January 2012 in an envelope addressed to Opposer's counsel at:

K&L GATES
70 West Madison Street
Suite 3100
Chicago, IL 60602-4207

EXHIBIT E

Reverse Whois: "John Phillip Avion" owns about **2 other domains**
 Email Search: **cognex@bellroy3.com** is associated with about 4 domains
customerservice@networksolutions.com is associated with about 709,803 domains
 NS History: **5 changes** on 8 unique name servers over 8 years.
 IP History: **5 changes** on 4 unique IP addresses over 7 years.
 Whois History: **27 records** have been archived since 2007-10-25.
 Reverse IP: **7,127 other sites** hosted on this server.


Log In or Create a FREE account to start monitoring this domain name

[illegible]

Whois Record For IndependentNation.com

[Tools](#)

Ads by Google

[GoDaddy #1 domain names \\$7.99](#) .COM Domains - Save Today Free Hosting, Blogcast, Email, More [GoDaddy.com](#)[Apply For SS Disability](#) Get Help Winning SSI & Disability Benefits. We'll Start Your App Now! [ApplySSDisabilityApplication.com](#)[VA Loans for the Military](#) Borrow up to \$729,000 with \$0 Down. Apply Online or Call: 800-582-8262 [www.VAMortgageCenter.com](#)[Social Security Administration](#) Free Online Social Security Disability Application! [www.AdsUp.com/Apply-For-Disability](#)[Free Online Advertising](#) See What \$75 of Google Ads Can Do For Your Business. Try It Now! [www.Google.com/AdWords](#)
[Whois Record](#)
[Site Profile](#)
[Registration](#)
[Server Stats](#)
[My Whois](#)
Reverse Whois: "John Phillips Avion" owns about **2 other domains**
 Email Search: [chicago.trademarks@kigates.com](#) is associated with about **64 domains**
[customerservice@networksolutions.com](#) is associated with about **708,395 domains**
Registrar History: **2 registrars**NS History: **8 changes** on 5 unique name servers over 9 years.IP History: **8 changes** on 3 unique IP addresses over 6 years.Whois History: **29 records** have been archived since 2007-06-20.Reverse IP: **377,796 other sites** hosted on this server. [Log In](#) or [Create a FREE account](#) to start monitoring this domain name

DomainTools for Windows®

Now you can access domain ownership records anytime, anywhere... right from your own desktop! [Download Now](#)

Registrant:

 John Phillips Avion
 c/o K&L Gates LLP
 70 West Madison Street
 Chicago, IL 60602
 US

Domain Name: INDEPENDENTNATION.COM

Administrative Contact:

Genie, Carol

[chicago.trademarks@kigates.com](#)
 K&L Gates LLP
 c/o K&L Gates LLP
 70 West Madison Street
 Chicago, IL 60602
 US
 312 807-4272

Technical Contact:

 Network Solutions, LLC
[customerservice@networksolutions.com](#)

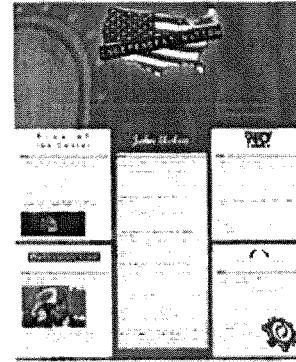
 13861 Sunrise Valley Drive
 Herndon, VA 20171
 US
 1-888-642-9675 fax: 571-434-4620

Record expires on 24 Aug 2014

Record created on 20-Mar-2004.

Domain servers in listed order:

NS63.WORLDDNIC.COM	205.178.190.32
NS64.WORLDDNIC.COM	206.188.198.32






Country TLDs General TLDs

Available domains for registration:

- | | |
|--|--------------------------|
| <input type="checkbox"/> independentNation.al | Register |
| <input type="checkbox"/> independentNation.bq | Register |
| <input type="checkbox"/> independentNation.cn | Register |
| <input type="checkbox"/> independentNation.co | Register |
| <input type="checkbox"/> independentNation.co.uk | Register |
| <input type="checkbox"/> independentNation.gg | Register |
| <input type="checkbox"/> independentNation.gk | Register |
| <input type="checkbox"/> independentNation.sg | Register |
| <input type="checkbox"/> independentNation.gy | Register |
| <input type="checkbox"/> independentNation.hk | Register |

[Register All Selected >](#) [Show All \(19\) >](#)

Related Results

 [Want Earn \\$393/Day?](#)
 Learn A \$11,737.23/Mth Blueprint You Can Copy Start Today!
[www.usajobforum.info/jobs](#)
 [How To Win The Lottery](#)
 Record Winning Pick 6 Winner Explains How To Win Pick 6
[www.lotterywinningformula.com](#)
 [Free Website](#)
 Build A Website & Get Found By Customers - Free. Learn More
[www.Homestead.com](#)
 [independent](#)
 Find Local Women for a Fun Date Tonight!
[MeetGirls.com](#)
[Feedback](#)
[Contact Us](#)
[Opt out?](#)

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that a copy of the foregoing Declaration of Jeffrey T. Petersen in Support of Opposer's Motion for Summary Judgment is being sent to counsel for Applicant via overnight mail on February 27, 2012 in an envelope addressed to Applicant's counsel at:

Herbert T. Patty, Esq.
1625 The Alameda, Suite 508
San Jose, CA 95126



Jeffrey T. Petersen, Esq.